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Attorneys for Plaintiff
UNION PACIFIC RAILROAD COMPANY

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

UNION PACIFIC RAILROAD COMPANY,

Plaintiff,

Case No. _____

V.

PILOT THOMAS LOGISTICS, THOMAS
WEST FUELS LUBRICANTS AND
CHEMICALS, LLC, SIMON PETROLEUM
INC., and DANIEL S. MCCANN,

Defendants.

COMPLAINT

COMES NOW, Plaintiff, Union Pacific Railroad Company (“Plaintiff” or “Union Pacific”), by and through its undersigned counsel and for its cause of action against Defendants, hereby states and alleges as follows:

PARTIES

1. Union Pacific is a corporation organized and existing under the laws of the state of Delaware with its principal place of business and corporate nerve center located in Omaha, Douglas County, Nebraska. Union Pacific is a common carrier engaged in interstate commerce subject to the jurisdiction of the Surface Transportation Board (“STB”).

2. Pilot Thomas Logistics LLC, (“Pilot Thomas”) is a limited liability company organized and existing under the laws of the state of Utah, with its principal place of business and corporate nerve center in Fort Worth, Texas. Pilot Thomas can be served by serving its registered agent, CT Corporation Services 701 S Carson Street STE 200, Carson City, NV 89701.

3. Thomas West Fuels Lubricants and Chemicals LLC (“Thomas West”) is a limited liability company organized and existing under the laws of the state of Utah, with its principal place of business and corporate nerve center in Fort Worth, Texas. Thomas West can be served by serving its registered agent, CT Corporation System 701 S Carson Street STE 200, Carson City, NV 89701

4. Simons Petroleum, LLC (“Simons”) is a limited liability company organized and existing under the laws of the state of Oklahoma, with its principal place of business and corporate nerve center in Fort Worth, Texas. Simons can be served by serving its registered agent, CT Corporation System 1999 Bryan Street, STE 900 Dallas, Texas.

5. Defendants Pilot Thomas, Thomas West, and Simons shall be referred to collectively as “the Company Defendants”.

6. Defendant, Daniel S. McCann, ("McCann") resides at 1221 Church Street Layton, Utah and all times relevant to this action was acting in the course and scope of his employment operating a semi-tractor in Beowawe, Eureka County, Nevada.

7. At all times relevant to this action, Defendant McCann was employed by one or more of the Company Defendants.

JURISDICTION AND VENUE

8. Paragraphs 1 through 7 are incorporated as though fully set forth herein.

9. This Court has jurisdiction over this matter pursuant to 28 U.S.C § 1332(a) as there is complete diversity and the matter in controversy exceeds the value of \$75,000.00, exclusive of interests and cost.

10. Venue of this action is appropriate in the United States District Court for the District of Nevada pursuant to 28 U.S.C. §§ 1391(b)(1) and/or (2), in that the Defendants reside

1 in the District and/or a substantial part of the events or omissions giving rise to the claim occurred
 2 in the District.

3 **FACTUAL ALLEGATIONS**

4 11. Paragraphs 1 through 10 are incorporated as though fully set forth herein.

5 12. On March 2, 2019, Defendant McCann was traveling southbound near the
 6 intersection of Nevada State Highway 306 and Industrial Road in Beowawe, Eureka County,
 7 Nevada. On this date, Defendant McCann was operating a 2017 Freightliner semi-tractor pulling
 8 dual tankers (“the semi-tractor”). Each tanker contained over 4000 gallons of diesel fuel.

9 13. While traveling southbound on Nevada State Highway 306 near Industrial Road
 10 and Milepost 618.59, Defendant McCann entered a public railroad crossing which crossed
 11 multiple sets of railroad tracks.

12 14. Union Pacific owns and operates railroad tracks throughout Eureka County,
 13 Nevada, including tracks which run east and west and intersect Industrial Road near milepost
 14 618.59.

15 15. On March 2, 2019, Defendant McCann entered the railroad crossing pulling over
 16 the first set of tracks, but failed to completely clear the first track, stopping the semi-tractor
 17 between track one and track two.

18 16. Defendant McCann stopped the semi-tractor in such a way that the rear tanker
 19 fouled the first track, while the tanker was stopped on the track an eastbound Union Pacific
 20 Locomotive collided with the tanker, causing approximately 4,000 gallons of diesel fuel to be
 21 released on to the ground.

22 17. At the time Defendant McCann entered the railroad crossing, the signal equipment
 23 was working properly, and the crossing arms began to engage as Defendant McCann entered the
 24 crossing.

25 18. At all times relevant, Defendant McCann was acting in the course and scope of his
 26 employment with one or more of the Company Defendants.

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19. At all times relevant, the semi-tractor was a vehicle used for business purposes for one or more of the Company Defendants and was owned by one or more of the Company Defendants.

20. As a result of the collision, Union Pacific incurred damages including, environmental clean-up costs, locomotive damage, and train delay.

FIRST CAUSE OF ACTION: NEGLIGENCE

21. Paragraphs 1-20 are incorporated as if fully set forth herein.

8 22. At all times material to this action, the corporate Defendants and their employee,
9 Defendant McCann, owed a duty to exercise reasonable care in operating the semi-tractor as a
10 reasonably prudent person under like or similar circumstances.

11 23. Defendants failed to operate the semi-tractor as a reasonably prudent person under
12 like or similar circumstances and were negligent in operating the semi-tractor in one or more of
13 the following particulars:

14 a. Violating Nevada Revised Statute §484B.560 by failing to stop prior to
15 traversing the tracks;

18 c. Violating Nevada Revised Statute §484B.553 by entering the grade
19 crossing after warning had been given of an immediately approaching train;

20 d. Failing to yield to the right of way;

21 e. Failing to maintain a proper look out;

22 f. Failing to maintain reasonable and proper control over the semi-tractor and
23 tankers;

24. Defendants negligence has caused damages to Union Pacific of not less than Six
25. Hundred Forty-Nine Thousand Seven Hundred Seventy-Six Dollars and Forty-Six cents
26. (\$649,776.46).

SECOND CAUSE OF ACTION: NEGLIGENCE PER SE

28 25. Paragraphs 1-24 are incorporated as though fully set forth herein.

26. Nevada statutory law consists of legislatively imposed standards of conduct defining reasonable conduct of Defendants.

27. Defendants violated Nevada statutory law in the following ways, which caused damages to Union Pacific:

a. Violating Nevada Revised Statute §484B.560 by failing to stop prior to traversing the tracks;

b. Violating Nevada Revised Statute §484B.560 by failing to completely cross the railroad tracks;

c. Violating Nevada Revised Statute §484B.553 by entering the grade crossing after warning had been given of an immediately approaching train;

28. The harm suffered by Union Pacific is the kind of harm Nevada law is intended to prevent

29. Defendants' violation of Nevada law has caused damages to Union Pacific of not less than Six Hundred Forty-Nine Thousand Seven Hundred Seventy-Six Dollars and Forty-Six cents (\$649,776.46).

WHEREFORE Union Pacific hereby prays for a judgment of this Court in its favor and against Defendant for its special damages of not less than Six Hundred Forty-Nine Thousand Seven Hundred Seventy-Six Dollars and Forty-Six cents (\$649,776.46), pre-judgment and post-judgment interest, attorney fees, costs incurred in prosecuting this action, plus exemplary damages and such other reasonable sums as this Court deems just and equitable.

DEMAND FOR JURY TRIAL

Plaintiff, pursuant to Fed. R. Civ. P. 38, demands a trial by jury on all issues so triable.

DATED this 2nd day of March, 2022.

PARSONS BEHLE & LATIMER

/s/ Zachary S. Shea
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